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FACSIMILE COVER LETTER

To: Commissioner for Patents
Examiner Pond, Robert M.

Firm: U.S. Patent and Trademark Office
Art Unit 3625

Facsimile: (571) 273-8300

From: Thomas F. Presson

Date: September 29, 2006

Re: FLH Ref No.: 450126-04025
Serial No: 09/936,882

Number of Pages: 42
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00401196

U.S. Application No. 09/936,882
Appellants Brief

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450126-04025


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants : Ken Kutaragi, et al.
Appl. No. : 09/936,882
Filed : February 21, 2002
Title : FLEXIBLE LICENSE PAYMENT METHOD FOR
ELECTRONIC COMMERCE SYSTEM
Art Unit : 3625
Examiner : Pond, Robert M.
Confirmation No. : 2953

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September 29, 2006	
Date of Signature	

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Non-Complaint Appeal Brief mailed on September 7, 2006, having a one-month statutory period for response set to expire on October 9, 2006 (October 7, 2006 being a Saturday), Appellants submit herewith a complete listing of the claims and revised remarks.

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1. REAL PARTY IN INTEREST

The real party in interest is Sony Computer Entertainment, Inc., a Japanese Corporation with offices at 1-1 Akasaka 7-cho-me, Minato-ku, Tokyo, 107-0052 Japan, and Sony Computer Entertainment America, a U.S. Corporation, having a place of business at 919 East Hillsdale Boulevard, 2nd floor, Forster City, California, 94404-2175. The assignment of this application is recorded in the United States Patent and Trademark office at Reel 012846; Frame 0901.

2. RELATED APPEALS AND INTERFERENCES

Upon information and belief, the undersigned attorney does not believe that there is any appeal or interference that will directly affect, be directly affected by or have a bearing on the Board's decision in the pending appeal.

3. STATUS OF THE CLAIMS

The Application was filed with claims 1-52 on February 21, 2002, and assigned Application Serial No. 09/936,882. This application claims the benefit of Japanese Patent Application No. 2000-8253, filed on Jan. 17, 2000; Japanese Patent Application Nos. 2000-22553, and 2000-173754 filed on Jan. 31, 2000, and Jun. 9, 2000, respectively.

The Examiner issued an Office Action on May 19, 2005. In the Office Action, the Examiner rejected claims 1-17, 20-24, 34-37, 40-43 and 46 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 4,528,643 to Freeny, Jr. (hereinafter, merely "Freeny"). Claims 18 and 19 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of Official Notice (hereinafter, merely "ON1"). Claims 25 - 33 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of U.S. Patent No. 5,101,352 to Rembert

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(hereinafter, merely "Rembert"). Claims 38, 44, and 47 – 52 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of Official Notice (hereinafter, merely "ON2"). Claims 39 and 45 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny and ON2, as applied to claims 38 and 44, further in view of Rembert.

In response to the Office Action Appellant submitted a response amendment on August 18, 2005 arguing the patentably distinct features of the application over the combination of the cited references.

The Examiner then issued a Final Office Action on October 25, 2005. In the Office Action, the Examiner maintained the earlier rejections of claims 1-52. A response to the Final Office Action was filed by Appellant on December 21, 2005 traversing the Examiner's rejections of the claims.

The Examiner issued an Advisory Action on January 19, 2006, maintaining the rejections recited in the Final Office Action.

A Notice of Appeal was filed by Appellant on February 27, 2006, from which this Appeal Brief is being filed.

Accordingly, the status of the claims may be summarized as follows:

Claims Allowed:	None.
Claims Rejected:	1-52.
Claims Appealed:	1-52.

The rejected claims 1-52 are set forth in the Appendix attached hereto.

Appellants appeal the Final Rejection of claims 1-52, which constitute all of the currently pending claims in this application.

4. STATUS OF THE AMENDMENTS

Appellants believe that all the submitted Amendments have been entered.

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5. SUMMARY OF THE CLAIMED SUBJECT MATTER

The citations to Figures and Specification locations are provided immediately following elements of independent claim 1, which is summarized below. However, such citations are provided merely as examples and are not intended to limit the interpretation of the claims or to evidence or create any estoppel.

There are twelve independent claims in the instant application at issue in this appeal, and are directed to a flexible license payment method for electronic commerce systems. The system includes stocking-burden-reducing sales-management system for articles such as computer readable media upon which an executable computer program is written. In a sales management server 1, an order-delivery processor 120 performs order and delivery processing with a manufacturer terminal 3. An order accepting unit 130 receives order information from a customer terminal 2, stores the order information in a sales database 170, and performs inventory management processes. A charging processor 140 performs the task of charging customers. The charging processor also determines a royalty to be paid to an added value creator of the article, and then transmits the information to an added value creator terminal 4. A delivery instruction unit 150 provides an instruction of delivery of the ordered articles to a delivery terminal 8.

Claim 1 is directed to a computer network system for managing the distribution of an article (Page 10, lines 1-24), the system comprising: an order accepting process system accepting an order for the article from a purchaser (Page 11, line 19 - Page 12, line 20); and a consideration determining process system functionally coupled to the order accepting process system and determining a value added consideration due to a value added provider of the article, based on information related to the accepted order (Page 11, line 19 - Page 13, line 21), wherein the article has been manufactured prior to the acceptance of the order (Page 12, line 21 - Page 13, line 2).

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Claim 9 is directed to a server computer coupled to a network system, the server computer programmed to manage the distribution of an article (Page 10, lines 1-24), and comprising: an order accepting process system accepting an order for the article from a purchaser (Page 11, line 19 - Page 12, line 20); and a consideration determining process system functionally coupled to the order accepting process system and determining a value added consideration due to a value added provider of the article, based on information related to the accepted order (Page 11, line 19 - Page 13, line 21), wherein the article has been manufactured prior to the acceptance of the order (Page 12, line 21 - Page 13, line 2).

Claim 16 is directed to a sales management system for articles each having a selling price determined in accordance with at least a manufacturing cost and added value (Page 11, line 19- Page 12, line 20), wherein the sales management system includes a sales management server and a customer terminal (Page 11, line 19- Page 12, line 20); said customer terminal has: an order accepting unit for accepting input order information including at least identification information on an article desired by a purchaser and the number of articles desired by the purchaser (Page 11, line 19 - Page 13, line 21), wherein the article has been manufactured prior to the acceptance of the order Page 12, line 21 - Page 13, line 2); and an output unit for transmitting the order information to said sales management server (Page 11, line 19 - Page 14, line 9); and said sales management server comprises: a receiver unit for receiving the order information outputted from said output unit of said customer terminal (Page 17, lines 1-3); and a consideration determination unit which determines a consideration to be paid to a creator of the added value in accordance with the contents of the order information received by said receiver unit (Page 15, line 22 - Page 16, line 9).

Claim 20 is directed to a sales management server for articles each having a selling price determined in accordance with at least a manufacturing cost and added value (Page 11, line 19-

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Page 12, line 20), said sales management server comprising: a receiver unit for receiving order information including at least article-identification information and the number of articles to be purchased (Page 17, lines 1-3); a consideration determination unit which determines a consideration to be paid to a creator of the added value in accordance with the contents of the order information after said receiver unit receives the order information (Page 15, line 22 - Page 16, line 9); and a consideration transmission unit for transmitting, to a computer at a site of the added value creator, consideration information including at least the consideration to be paid to the added value creator (Page 11, line 19 - Page 17), wherein the articles to be purchased have been manufactured prior to the receipt of order information (Page 12, line 21 - Page 13, line 2).

Claim 22 is directed to a method for selling, by an agent, articles each having a selling price determined in accordance with at least a manufacturing cost and added value (Page 11, line 19- Page 12, line 20), said method comprising the steps of: purchasing said articles at said manufacturing price, storing the purchase price, and keeping said articles in stock (Page 12-13 and 15-16); and paying, after selling each of the articles in stock, a consideration corresponding to the added value, to a creator of the added value (Page 15, line 22 - Page 16, line 9), wherein the articles in stock have been manufactured prior to the acceptance of an order for the sale by the agent of said articles (Page 12, line 21 - Page 13, line 2).

Claim 23 is directed to a computer-readable recording medium containing a program to be executed by a computer as a server managing the sale of articles each having a selling price determined in accordance with at least a manufacturing cost and added value (Page 11, line 19- Page 12, line 20), said computer-readable recording medium, wherein said program comprises the steps of: receiving order information including at least article-identification information and the number of articles to be purchased (Page 11, line 19 - Page 13, line 21); determining, after receiving said order information, a consideration to be paid to a creator of the added value in

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accordance with the contents of the order information (Page 15, line 22 - Page 16, line 9); and transmitting, to a computer at a site of the added value creator, consideration information including at least the consideration to be paid to a creator of the added value (Page 11, line 19 - Page 17), wherein the articles to be purchased have been manufactured prior to the receipt of order information (Page 12, line 21 - Page 13, line 2).

Claim 24 is directed to a program to be executed by a server for managing the sale of articles each having a selling price determined in accordance with at least a manufacturing cost and added value (Page 11, line 19- Page 12, line 20), wherein said program allows a computer as said server to execute the steps of: receiving order information including at least article-identification information and the number of articles to be purchased (Page 11, line 19 - Page 13, line 21); determining, after receiving said order information, a consideration to be paid to a creator of the added value in accordance with the contents of the order information (Page 15, line 22 - Page 16, line 9); and transmitting, to a computer at a site of the added value creator, consideration information including at least the consideration to be paid to the added value creator (Page 11, line 19 - Page 17), wherein the articles to be purchased have been manufactured prior to the receipt of order information (Page 12, line 21 - Page 13, line 2).

Claim 25 is directed to a sales management system for articles each having a selling price determined in accordance with at least an article manufacturing cost and the added value thereof (Page 10, lines 1-24; Page 11, line 19 - Page 13, line 21), said sales management system comprising: a receiver unit for receiving an article manufacturing cost and the number of articles manufactured which are inputted (Page 17, lines 1-11); a storage unit for storing the inputted manufacturing cost and number of articles manufactured (Figures 14A, 14B and 15); an order-accepting unit for accepting an order by receiving at least identification information of an ordered article and the number of articles (Page 11, line 19 - Page 13, line 21), wherein the

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articles have been manufactured prior to the acceptance of the order (Page 12, line 21 - Page 13, line 2); a stock-article calculation unit for calculating the number of articles in stock at a specific time from the number of the manufactured articles stored in said storage unit and the number of ordered articles received by said order-accepting unit (Page 12, line 17 - Page 13, line 5); and a stock balance calculation unit for calculating a balance of stock at the specific time based on the calculated number of articles in stock and the manufacturing cost stored in said storage unit (Page 15, line 13 - Page 16, line 9), wherein the balance of stock calculated by said stock balance calculation unit does not include at least a consideration corresponding to the added value (Page 12, line 17 - Page 13, line 5; Page 15, line 13 - Page 16, line 9).

Claim 29 is directed to a sales management system for articles each having a selling price determined in accordance with at least an article manufacturing cost and an added value thereof (Page 10, lines 1-24; Page 11, line 19 - Page 13, line 21), said sales management system having a first and a second servers wherein said first and second servers are connected to each other via a network, wherein said first server has: an order accepting unit for accepting an order by receiving at least an article identification information and the number of ordered articles from an outside source (Page 11, line 19 - Page 13, line 21); an order placing unit for outputting order information to a computer for an added value creator of the ordered articles after said order accepting unit accepts the order (Pages 11-13); and a shipping processing unit for transmitting, to a computer of a distributor and the second server, shipping information so as to instruct the distributor to ship the ordered articles after the ordered articles in accordance with the order information outputted by the order accepting unit, are received (Pages 17-20); and said second server has: a receiver unit for receiving said shipping information transmitted from said first server (Page 17, lines 1-11); a sales processing unit for processing sales of said articles in accordance with the shipping information received by said receiver unit (Pages 15-20); a

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consideration determination unit which determines, in accordance with the shipping information received by said receiver unit, the amount of consideration, corresponding to the added value, which is to be paid to said added value creator (Page 15, line 22 - Page 16, line 9); and a transmitter unit for transmitting, to the computer of said added value creator via the network information on the consideration, corresponding to the added value, determined by said consideration determination unit, and the number of ordered articles accepted by said order accepting unit (Page 11, line 19 - Page 14, line 9), wherein the articles have been manufactured prior to the acceptance of the order (Page 12, line 21 - Page 13, line 2).

Claim 34 is directed to a computer-implemented method for managing the sale of an article from a product distributor (Page 10, lines 1-24), the method comprising: receiving payment corresponding to a selling price for the article, the payment being received by a distributor of the article from a buyer of the article (Page 13, lines 9-15; Page 16, lines 10-16), wherein the article has been manufactured prior to receipt of payment (Page 12, line 21 - Page 13, line 2); determining a royalty due to a licensor of the article, based on the selling price of the article (Page 22, line 21 - Page 23, line 3); transmitting, from the distributor to a manufacturer of the article, portions of the selling price payment corresponding to a royalty and a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article (Page 22, line 21 - Page 24, line 3); and transmitting, from the licensee to the licensor, payment corresponding to the royalty, upon a sale the article to the customer (Page 38, line 11 - Page 39, line 14).

Claim 40 is directed to a server computer coupled to a network, and configured to manage the sale of an article from a product distributor (Page 10, lines 1-24), the server computer comprising: means for receiving payment corresponding to a selling price for the article, the payment being received by a distributor of the article from a buyer of the article (Page 13, lines 9-15; Page 16, lines 10-16), wherein the article has been manufactured prior to receipt

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of payment (Page 12, line 21 - Page 13, line 2); means for determining a royalty due to a licensor of the article, based on the selling price of the article (Page 22, line 21 - Page 23, line 3); means for transmitting, from the distributor to a manufacturer of the article, a portion of the selling price payment corresponding to a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article (Page 22, line 21 - Page 24, line 3); and means for transmitting, from the distributor to the licensor, a portion of the selling price payment corresponding to the royalty upon a sale the article to the customer (Page 38, line 11 - Page 39, line 14).

Claim 46 is directed to a system for managing the distribution of an article from a distributor to one or more customers (Page 10, lines 1-24), the system comprising: a licensor who is authorized to make and sell the article and grant production and sales rights to third party entities in exchange for a royalty (Page 22, line 21 - Page 23, line 3), wherein the article is manufactured prior to the receipt of payment for the sale of the article (Page 12, line 21 - Page 13, line 2); a distributor including one or more locations adapted to warehouse and deliver the articles, and an electronic commerce server configured to store information regarding the identity of the article, a cost price associated with the article, and a selling price associated with the article (Page 36, line 18 - Page 39, line 14); a licensee who is authorized by the licensor to manufacture the product in exchange for the royalty, wherein the licensee, licensor, and distributor each have a licensee computer, licensor computer, and distributor computer, respectively, that are connected by a computer network and wherein royalty payments are made to the licensee computer upon sale of the article by the distributor computer to a customer (Page 22, line 21 - Page 23, line 3; Page 36, line 18 - Page 41, line 20).

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450126-04025**6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Applicants request a pre-appeal brief conference to review the rejection of:

- 1) claims 1-17, 20-24, 34-37, 40-43, and 46 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 4,528,643 to Freeny, Jr. (hereinafter, merely "Freeny");
- 2) claims 1-17, 20-24, 34-37, 40-43, and 46 under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of Official Notice (hereinafter, merely "ON3");
- 3) claims 18 and 19 under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny and ON3, as applied to claim 17, further in view of Official Notice (hereinafter, merely "ON1");
- 4) claims 25-33 under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of ON3, further in view of U.S. Patent 5,101,352 to Rembert (hereinafter, merely "Rembert");
- 5) claims 38, 44, and 47-52 under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of ON3, further in view of Official Notice (hereinafter, merely "ON2"); and
- 6) claims 39 and 45 under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny, ON3, and ON2, as applied to claims 38 and 44, further in view of Rembert.

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7. ARGUMENTS

**The §102 Rejections Should be Withdrawn Because Claim Features are Not Disclosed,
Taught or Suggested in the Reference**

Claims 1-17, 20-24, 34-37, 40-43, and 46 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 4,528,643 to Freeny, Jr. (hereinafter, merely "Freeny").

Claim 1 recites, *inter alia*:

"...an order accepting process system accepting an order for the article from a purchaser; and

a consideration determining process system functionally coupled to the order accepting process system and determining a value added consideration due to a value added provider of the article, based on information related to the accepted order,

wherein the article has been manufactured prior to the acceptance of the order." (emphasis added)

Accordingly, in one aspect of claim 1, the computer network system for managing the distribution of an article includes an order accepting process system accepting an order for the article from a purchaser . . . wherein the article has been manufactured prior to the acceptance of the order.

By contrast, Freeny describes a customer entering payment information for an article at a point-of-sale location, then having the information sent directly to the owner of the information, before a sale of a recording (or article) is authorized. *Freeny, col. 2, line 66 to col. 3, line 24.* In other words, Freeny discloses manufacturing the articles for sale after the owner of the information has accepted the order, received payment, and authorized reproduction of the articles. *See Freeny, col. 3, lines 25-39.* Therefore, Freeny fails to teach or suggest a computer network system for managing the distribution of an article that includes an order accepting process system accepting an order for the article from a purchaser . . . wherein the article has

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been manufactured prior to the acceptance of the order. Therefore, Freeny fails to teach or suggest all the limitations recited in claim 1.

Based on the foregoing discussion, it is submitted that claim 1 should be allowable over Freeny. Independent claims 9, 16, and 20, 22, 23 and 24, closely parallel and contain substantially similar limitations as those recited in, independent claim 1, and thus claims 9, 16, 20, 22, 23 and 24 should be allowable over Freeny.

The §103 Rejections Should be Withdrawn Because Claim Features are Not Disclosed, Taught or Suggested in the Reference

Appellants' arguments in support of patentability of independent claims 1, 9, 16, 20, 22-24, 25, 29, 34, 40 and 46 are found in the reply filed August 18, 2005 at pages 22-23. In summary, the present application claims a system for managing the distribution of an article, wherein the article has been manufactured prior to the acceptance of the order. (*emphasis added*)

Claims 1-17, 20-24, 34-37, 40-43, and 46 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 4,528,643 to Freeny, Jr. (hereinafter, merely "Freeny") in view of Official Notice (hereinafter, merely "ON3").

In the October 25, 2005 Final Office Action, it was argued that Freeny in view of ON3 renders obvious the underlined limitation. *See Final Office Action, page 7.* However, no portion of Freeny is cited to suggest, nor does Freeny teach or disclose, pre-manufacturing or pre-stocking articles for sale at point-of-sale locations. This would go directly against Freeny's aim; namely, to decrease inventory and distribution costs associated with prior art article distribution systems, by requiring owner authorization of sale prior to article manufacture. *See Freeny, col. 4, lines 8-17.*

Indeed, Freeny teaches away from stocking even a limited supply of pre-manufactured items, because of the configuration costs associated with determining which and how many items

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to stock at the point-of-sale location. *See Freeny, col. 2, lines 16-24.* Instead, Freeny provides "a means for reproducing or manufacturing material objects at point of sale locations only with the permission of the owner of the information . . ." and "solves the problems associated with manufacturing, inventory, configuration, distribution and collection previously discussed . . ."
Freeny, col. 4, lines 8-17 (emphasis added).

It is further indicated that Freeny in view of ON3 would suggest a vending machine approach of stocking a few previously manufactured items are pre-stocked in the machine for sale. *Final Office Action, page 7.* However, Freeny discourages this approach, by recognizing, "the material objects still are manufactured and shipped or transported to the point of sale locations." *Freeny, col. 3, lines 56-61.* Pre-manufacturing leads to increased manufacturing and distribution costs, teaching directly against Freeny's aim of reducing such costs. Therefore, Freeny and ON3, individually or in combination, fail to teach or suggest a system for managing the distribution of an article, wherein the article has been manufactured prior to the acceptance of the order. Therefore, Freeny in view of ON3 fails to teach or suggest all the limitations recited in claim 1.

Based on the foregoing discussion, it is submitted that claim 1 should be allowable over Freeny and ON3. Since independent claim 9 closely parallels claim 1, claims 9 should be allowable over Freeny and ON3.

Claims 1-17, 20-24, 34-37, 40-43, and 46 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of Official Notice (hereinafter, merely "ON3").

Claim 16 recites, *inter alia*:

"A sales management system for articles each having a selling price determined in accordance with at least a manufacturing cost and added value, wherein

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the sales management system includes a sales management server and a customer terminal;

said customer terminal has:

an order accepting unit for accepting input order information including at least identification information on an article desired by a purchaser and the number of articles desired by the purchaser,

wherein the article has been manufactured prior to the acceptance of the order; and

an output unit for transmitting the order information to said sales management server; and

said sales management server comprises:

a receiver unit for receiving the order information outputted from said output unit of said customer terminal; and

a consideration determination unit which determines a consideration to be paid to a creator of the added value in accordance with the contents of the order information received by said receiver unit." (emphasis added)

According to Appellants, no portion of Freeny is cited to suggest, nor does Freeny teach or disclose, pre-manufacturing or pre-stocking articles for sale at point-of-sale locations. This would go directly against Freeny's aim; namely, to decrease inventory and distribution costs associated with prior art article distribution systems, by requiring owner authorization of sale prior to article manufacture. *See Freeny, col. 4, lines 8-17.*

Indeed, Freeny teaches away from stocking even a limited supply of pre-manufactured items, because of the configuration costs associated with determining which and how many items to stock at the point-of-sale location. *See Freeny, col. 2, lines 16-24.* Instead, Freeny provides "a means for reproducing or manufacturing material objects at point of sale locations only with the permission of the owner of the information . . ." and "solves the problems associated with

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manufacturing, inventory, configuration, distribution and collection previously discussed”

Freeny, col. 4, lines 8-17 (emphasis added).

It is further indicated that Freeny in view of ON3 would suggests a vending machine approach of stocking a few previously manufactured items are pre-stocked in the machine for sale. *Final Office Action, page 7.* However, Freeny discourages this approach, by recognizing, “the material objects still are manufactured and shipped or transported to the point of sale locations.” *Freeny, col. 3, lines 56-61.* Pre-manufacturing leads to increased manufacturing and distribution costs, teaching directly against Freeny’s aim of reducing such costs. Therefore, Freeny and ON3, individually or in combination, fail to teach or suggest a sales management system for articles each having a selling price determined in accordance with at least a manufacturing cost and added value, wherein an order accepting unit for accepting input order information including at least identification information on an article desired by a purchaser and the number of articles desired by the purchaser, wherein the article has been manufactured prior to the acceptance of the order; and an output unit for transmitting the order information to said sales management server. Therefore, Freeny in view of ON3 fails to teach or suggest all the limitations recited in claim 16.

Based on the foregoing discussion, it is submitted that claim 16 should be allowable over Freeny and ON3. Since independent claims 20 and 22-24 closely parallel claim 16, claims 20 and 22-24 should be allowable over Freeny and ON3.

Claims 25-33 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Freeny in view of ON3, further in view of U.S. Patent 5,101,352 to Rembert (hereinafter, merely “Rembert”).

Claim 25 recites, *inter alia*:

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"A sales management system for articles each having a selling price determined in accordance with at least an article manufacturing cost and the added value thereof, said sales management system comprising:

a receiver unit for receiving an article manufacturing cost and the number of articles manufactured which are inputted;

a storage unit for storing the inputted manufacturing cost and number of articles manufactured;

an order-accepting unit for accepting an order by receiving at least identification information of an ordered article and the number of articles,

wherein the articles have been manufactured prior to the acceptance of the order;

a stock-article calculation unit for calculating the number of articles in stock at a specific time from the number of the manufactured articles stored in said storage unit and the number of ordered articles received by said order-accepting unit; and

a stock balance calculation unit for calculating a balance of stock at the specific time based on the calculated number of articles in stock and the manufacturing cost stored in said storage unit,

wherein the balance of stock calculated by said stock balance calculation unit does not include at least a consideration corresponding to the added value." (emphasis added)

According to Appellants, no portion of Freeny is cited to suggest, nor does Freeny teach or disclose, pre-manufacturing or pre-stocking articles for sale at point-of-sale locations. This would go directly against Freeny's aim; namely, to decrease inventory and distribution costs associated with prior art article distribution systems, by requiring owner authorization of sale prior to article manufacture. *See Freeny, col. 4, lines 8-17.*

Indeed, Freeny teaches away from stocking even a limited supply of pre-manufactured items, because of the configuration costs associated with determining which and how many items to stock at the point-of-sale location. *See Freeny, col. 2, lines 16-24.* Instead, Freeny provides

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“a means for reproducing or manufacturing material objects at point of sale locations only with the permission of the owner of the information . . .” and “solves the problems associated with manufacturing, inventory, configuration, distribution and collection previously discussed . . .”
Freeny, col. 4, lines 8-17 (emphasis added).

It is further indicated that Freeny in view of ON3 would suggests a vending machine approach of stocking a few previously manufactured items are pre-stocked in the machine for sale. *Final Office Action, page 7.* However, Freeny discourages this approach, by recognizing, “the material objects still are manufactured and shipped or transported to the point of sale locations.” *Freeny, col. 3, lines 56-61.* Pre-manufacturing leads to increased manufacturing and distribution costs, teaching directly against Freeny’s aim of reducing such costs. Therefore, Freeny and ON3, individually or in combination, fail to teach or suggest a sales management system for articles each having a selling price determined in accordance with at least an article manufacturing cost and the added value thereof wherein the articles have been manufactured prior to the acceptance of the order; a stock-article calculation unit for calculating the number of articles in stock at a specific time from the number of the manufactured articles stored in said storage unit and the number of ordered articles received by said order-accepting unit. Therefore, Freeny in view of ON3 fails to teach or suggest all the limitations recited in claim 25.

Based on the foregoing discussion, it is submitted that claim 25 should be allowable over Freeny and ON3. Since independent claim 29 closely parallels claim 25, claim 29 should be allowable over Freeny and ON3.

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Claims 1-17, 20-24, 34-37, 40-43, and 46 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of Official Notice (hereinafter, merely "ON3").

Claims 38, 44, and 47-52 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny in view of ON3, further in view of Official Notice (hereinafter, merely "ON2").

Claims 39 and 45 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Freeny, ON3, and ON2, as applied to claims 38 and 44, further in view of Rembert.

Claim 34 recites, *inter alia*:

"A computer-implemented method for managing the sale of an article from a product distributor, the method comprising:

receiving payment corresponding to a selling price for the article, the payment being received by a distributor of the article from a buyer of the article,

wherein the article has been manufactured prior to receipt of payment;

determining a royalty due to a licensor of the article, based on the selling price of the article;

transmitting, from the distributor to a manufacturer of the article, portions of the selling price payment corresponding to a royalty and a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article; and

transmitting, from the licensee to the licensor, payment corresponding to the royalty, upon a sale the article to the customer." (emphasis added)

According to Appellants, no portion of Freeny is cited to suggest, nor does Freeny teach or disclose, pre-manufacturing or pre-stocking articles for sale at point-of-sale locations. This would go directly against Freeny's aim; namely, to decrease inventory and distribution costs associated with prior art article distribution systems, by requiring owner authorization of sale prior to article manufacture. *See Freeny, col. 4, lines 8-17.*

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Indeed, Freeny teaches away from stocking even a limited supply of pre-manufactured items, because of the configuration costs associated with determining which and how many items to stock at the point-of-sale location. *See Freeny, col. 2, lines 16-24.* Instead, Freeny provides "a means for reproducing or manufacturing material objects at point of sale locations only with the permission of the owner of the information . . ." and "solves the problems associated with manufacturing, inventory, configuration, distribution and collection previously discussed . . ."
Freeny, col. 4, lines 8-17 (emphasis added).

It is further indicated that Freeny in view of ON3 would suggest a vending machine approach of stocking a few previously manufactured items are pre-stocked in the machine for sale. *Final Office Action, page 7.* However, Freeny discourages this approach, by recognizing, "the material objects still are manufactured and shipped or transported to the point of sale locations." *Freeny, col. 3, lines 56-61.* Pre-manufacturing leads to increased manufacturing and distribution costs, teaching directly against Freeny's aim of reducing such costs. Therefore, Freeny and ON3, individually or in combination, fail to teach or suggest a computer-implemented method for managing the sale of an article from a product distributor wherein the article has been manufactured prior to receipt of payment; determining a royalty due to a licensor of the article, based on the selling price of the article; transmitting, from the distributor to a manufacturer of the article, portions of the selling price payment corresponding to a royalty and a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article. Therefore, Freeny in view of ON3 fails to teach or suggest all the limitations recited in claim 34.

Based on the foregoing discussion, it is submitted that claim 34 should be allowable over Freeny and ON3. Since independent claims 40 and 46 closely parallel claim 34, claims 40 and 46 should be allowable over Freeny and ON3.

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Since claims 2-8, 10-15 depend from independent claims 1 and 9, claims 2-8 and 10-15 should be allowable over Freeny and ON3. Since claims 17-19 and 21 depend from independent claims 16 and 20, claims 17-19 and 21 should be allowable over Freeny and ON3. Since claims 26-28 and 30-33 depend from independent claims 25 and 29, claims 26-28 and 30-33 should be allowable over Freeny and ON3. Since claims 35-39, 41-45 and 47-52 depend from claims 34, 40 and 46, claims 35-39, 41-45 and 47-52 should also be allowable over Freeny and ON3.

Appellants submit that Official Notices 1-3 (ON1, ON2 and ON3) are improper. Appellants submit that the claims recite subject matter that is not taught by Freeny, and the Examiner utilizes Official Notice to fill in what is lacking from Freeny.

CONCLUSION

For the reasons discussed above, claims 1-52 are patentable. It is, therefore, respectfully submitted that the Examiner erred in rejecting claims 1-52, and a reversal by the Board is solicited.

Respectfully submitted,
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APPENDIX I**CLAIMS ON APPEAL**

1. (Previously Presented) A computer network system for managing the distribution of an article, the system comprising:

an order accepting process system accepting an order for the article from a purchaser; and

a consideration determining process system functionally coupled to the order accepting process system and determining a value added consideration due to a value added provider of the article, based on information related to the accepted order,

wherein the article has been manufactured prior to the acceptance of the order.
2. (Original) The computer network system of claim 1 wherein the value added provider comprises a licensee of the article.
3. (Original) The computer network system of claim 2 wherein the added value consideration comprises a licensing royalty to be paid to a creator of the article.
4. (Original) The computer network system of claim 3 further comprising a membership management processing system managing a set of members including the purchaser, and wherein the set of members pays the value added consideration in accordance with a predetermined value based on the information related to the accepted order.

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5. (Original) The computer network system of claim 4 wherein the value added consideration is paid to the value added provider upon the order of a predetermined number of articles by the purchaser.

6. (Original) The computer network system of claim 5 wherein the information related to the accepted order comprises an article identifier, a number of articles purchased by the purchaser, and a manufacturing cost for the article.

7. (Original) The computer network system of claim 6 further comprising a stock management process associating the manufacturing cost of the article with the value added consideration, and wherein the value added provider bears the manufacturing cost of the article until the order accepting process accepts the order from the purchaser.

8. (Original) The computer network system of claim 7 wherein the article comprises a computer readable medium containing one or more programs executable by a computer.

9. (Previously Presented) A server computer coupled to a network system, the server computer programmed to manage the distribution of an article, and comprising:

an order accepting process system accepting an order for the article from a purchaser; and
a consideration determining process system functionally coupled to the order accepting process system and determining a value added consideration due to a value added provider of the article, based on information related to the accepted order,

wherein the article has been manufactured prior to the acceptance of the order.

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10. (Original) The server computer of claim 9 wherein the added value consideration comprises a license royalty to be paid to a creator of the article.

11. (Original) The server computer of claim 10 further comprising a membership management processing system managing a set of members including the purchaser, and wherein the set of members pays the value added consideration in accordance with a predetermined value based on the information related to the accepted order.

12. (Original) The server computer of claim 11 wherein the value added consideration is paid to the value added provider upon the order of a predetermined number of articles by the purchaser.

13. (Original) The server computer of claim 12 wherein the information related to the accepted order comprises an article identifier, a number of articles purchased by the purchaser, and a manufacturing cost for the article.

14. (Original) The server computer of claim 13 further comprising a stock management process associating the manufacturing cost of the article with the value added consideration, and wherein the value added provider bears the manufacturing cost of the article until the order accepting process accepts the order from the purchaser.

15. (Original) The server computer of claim 14 wherein the article comprises a computer readable medium containing one or more programs executable by a computer.

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16. (Previously Presented) A sales management system for articles each having a selling price determined in accordance with at least a manufacturing cost and added value, wherein

the sales management system includes a sales management server and a customer terminal;

said customer terminal has:

an order accepting unit for accepting input order information including at least identification information on an article desired by a purchaser and the number of articles desired by the purchaser,

wherein the article has been manufactured prior to the acceptance of the order; and

an output unit for transmitting the order information to said sales management server; and said sales management server comprises:

a receiver unit for receiving the order information outputted from said output unit of said customer terminal; and

a consideration determination unit which determines a consideration to be paid to a creator of the added value in accordance with the contents of the order information received by said receiver unit.

17. (Original) A sales management system according to claim 16, wherein said sales management server further comprises a consideration transmission unit for transmitting, to a computer of the added value creator, consideration information including at least the consideration to be paid to the added value creator.

18. (Original) A sales management system according to claim 17, wherein

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said sales management server is linked at least to a computer for controlling delivery of the articles;

the order information further includes delivery-destination designating information designating the destination of an ordered article; and

said sales management server further comprises:

a storage unit for storing customer information including at least one delivery-destination address including a customer's home address; and

a delivery instruction unit which determines a delivery-destination address by referring, based on the delivery-destination designating information, to the customer information, and which transmits, to the computer for controlling delivery, delivery-instruction information including at least identification information on the article desired by the purchaser and the number of articles desired by the purchaser, which are included in the order information, and the delivery-destination address.

19. (Original) A sales management system according to claim 18, wherein said sales management server is linked at least to a computer for controlling delivery of the articles; (

the order information further includes delivery-destination designating information designating the destination of an ordered article; and

said sales management server further comprises:

a storage unit for storing customer information including at least one delivery-destination address including a customer's home address; and

a delivery instruction unit which determines a delivery-destination address by referring, based on the delivery-destination designating information, to the customer information, and

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which transmits, to the computer for controlling delivery, delivery-instruction information including at least identification information on the article desired by the purchaser and the number of articles desired by the purchaser, which are included in the order information, and the delivery-destination address.

20. (Previously Presented) A sales management server for articles each having a selling price determined in accordance with at least a manufacturing cost and added value, said sales management server comprising:

a receiver unit for receiving order information including at least article-identification information and the number of articles to be purchased;

a consideration determination unit which determines a consideration to be paid to a creator of the added value in accordance with the contents of the order information after said receiver unit receives the order information; and

a consideration transmission unit for transmitting, to a computer at a site of the added value creator, consideration information including at least the consideration to be paid to the added value creator,

wherein the articles to be purchased have been manufactured prior to the receipt of order information.

21. (Original) A sales management server according to claim 20, wherein said articles are recording media on each of which a computer-readable program is fixed; and the added value creator is a person having the right to sell the program.

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22. (Previously Presented) A method for selling, by an agent, articles each having a selling price determined in accordance with at least a manufacturing cost and added value, said method comprising the steps of:

purchasing said articles at said manufacturing price, storing the purchase price, and keeping said articles in stock; and

paying, after selling each of the articles in stock, a consideration corresponding to the added value, to a creator of the added value,

wherein the articles in stock have been manufactured prior to the acceptance of an order for the sale by the agent of said articles.

23. (Previously Presented) A computer-readable recording medium containing a program to be executed by a computer as a server managing the sale of articles each having a selling price determined in accordance with at least a manufacturing cost and added value, said computer-readable recording medium, wherein said program comprises the steps of:

receiving order information including at least article-identification information and the number of articles to be purchased;

determining, after receiving said order information, a consideration to be paid to a creator of the added value in accordance with the contents of the order information; and

transmitting, to a computer at a site of the added value creator, consideration information including at least the consideration to be paid to a creator of the added value,

wherein the articles to be purchased have been manufactured prior to the receipt of order information.

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24. (Previously Presented) A program to be executed by a server for managing the sale of articles each having a selling price determined in accordance with at least a manufacturing cost and added value, wherein said program allows a computer as said server to execute the steps of:

receiving order information including at least article-identification information and the number of articles to be purchased;

determining, after receiving said order information, a consideration to be paid to a creator of the added value in accordance with the contents of the order information; and

transmitting, to a computer at a site of the added value creator, consideration information including at least the consideration to be paid to the added value creator,

wherein the articles to be purchased have been manufactured prior to the receipt of order information.

25. (Previously Presented) A sales management system for articles each having a selling price determined in accordance with at least an article manufacturing cost and the added value thereof, said sales management system comprising:

a receiver unit for receiving an article manufacturing cost and the number of articles manufactured which are inputted;

a storage unit for storing the inputted manufacturing cost and number of articles manufactured;

an order-accepting unit for accepting an order by receiving at least identification information of an ordered article and the number of articles,

wherein the articles have been manufactured prior to the acceptance of the order;

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a stock-article calculation unit for calculating the number of articles in stock at a specific time from the number of the manufactured articles stored in said storage unit and the number of ordered articles received by said order-accepting unit; and

a stock balance calculation unit for calculating a balance of stock at the specific time based on the calculated number of articles in stock and the manufacturing cost stored in said storage unit,

wherein the balance of stock calculated by said stock balance calculation unit does not include at least a consideration corresponding to the added value.

26. (Original) A sales management system according to claim 25, further comprising:
a consideration-calculation unit which calculates the amount of a consideration in accordance with the number of the ordered articles from information on the consideration corresponding to the added value and the number of the ordered articles received by said order-accepting unit; and

an output unit which transmits, to a computer of the added value creator, information which includes the amount of the consideration calculated by said consideration-calculation unit.

27. (Original) A sales management system according to claim 26, further comprising:
a unit for calculating, based on the purchase cost of said articles, the amount of a consideration to be paid by the added value creator;

an output unit for transmitting, to a computer of a person receiving the consideration, information including the calculated amount of the consideration to be paid by the added value creator;

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a unit for calculating the amount to be paid to the added value creator from the calculated amount of the consideration to be paid by the added value creator, the manufacturing cost stored in said storage unit, and the purchase cost; and

an output unit for transmitting, to a computer of the added value creator, information including the calculated amount of the consideration to be paid to the added value creator.

28. (Original) A sales management system according to claim 27, further comprising:

a unit for calculating the amount of a consideration corresponding to added value per article from at least the purchase price of said articles, and the manufacturing cost stored in said storage unit;

a unit for calculating the amount of a consideration in accordance with the number of ordered articles from the amount of the consideration per article, calculated by said calculating unit, and the number of ordered articles received by said order-accepting unit; and

an output unit for transmitting the amount of the consideration, calculated by said consideration-amount calculating unit, in accordance with the number of ordered articles to a computer of the added value creator.

29. (Previously Presented) A sales management system for articles each having a selling price determined in accordance with at least an article manufacturing cost and an added value thereof, said sales management system having a first and a second servers wherein said first and second servers are connected to each other via a network, wherein

said first server has:

an order accepting unit for accepting an order by receiving at least an article identification information and the number of ordered articles from an outside source;

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an order placing unit for outputting order information to a computer for an added value creator of the ordered articles after said order accepting unit accepts the order; and

a shipping processing unit for transmitting, to a computer of a distributor and the second server, shipping information so as to instruct the distributor to ship the ordered articles after the ordered articles in accordance with the order information outputted by the order accepting unit, are received; and

said second server has:

a receiver unit for receiving said shipping information transmitted from said first server;

a sales processing unit for processing sales of said articles in accordance with the shipping information received by said receiver unit;

a consideration determination unit which determines, in accordance with the shipping information received by said receiver unit, the amount of consideration, corresponding to the added value, which is to be paid to said added value creator; and

a transmitter unit for transmitting, to the computer of said added value creator via the network information on the consideration, corresponding to the added value, determined by said consideration determination unit, and the number of ordered articles accepted by said order accepting unit,

wherein the articles have been manufactured prior to the acceptance of the order.

30. (Original) A sales management system according to claim 29, further comprising an output unit for transmitting, to the computer of said added value creator, information including the consideration determined by said consideration determination unit.

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31. (Original) A sales management system according to claim 30, further comprising an output unit for transmitting, to the computer of said added value creator, information including the consideration determined by said consideration determination unit.

32. (Original) A sales management system according to claim 31, further comprising:
a storage unit for storing an article identification information and information on purchase price of said article by associating with each other;

a unit for determining the amount of a consideration to be paid by the added value creator, based on information on the purchase price acquired from said storage unit by means of corresponding to said article identification information accepted by said order accepting unit; and

an output unit for transmitting, to a computer of said added value creator, information including the consideration amount corresponding to said added value and the consideration amount determined by said unit for determining the amount of a consideration to be paid by the added value creator.

33. (Original) A sales management system according to claim 32, further comprising:
a storage unit for storing an article identification information and information on purchase price of said article by associating with each other;

a unit for determining the amount of a consideration to be paid by the added value creator, based on information on the purchase price acquired from said storage unit by means of corresponding to said article identification information accepted by said order accepting unit; and

an output unit for transmitting, to a computer of said added value creator, information including the consideration amount corresponding to said added value and the consideration amount determined by said unit for determining the amount of a consideration to be paid by the

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added value creator.

34. (Previously Presented) A computer-implemented method for managing the sale of an article from a product distributor, the method comprising:

receiving payment corresponding to a selling price for the article, the payment being received by a distributor of the article from a buyer of the article,

wherein the article has been manufactured prior to receipt of payment;

determining a royalty due to a licensor of the article, based on the selling price of the article;

transmitting, from the distributor to a manufacturer of the article, portions of the selling price payment corresponding to a royalty and a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article; and

transmitting, from the licensee to the licensor, payment corresponding to the royalty, upon a sale the article to the customer.

35. (Original) The method of claim 34 wherein the article is a computer program affixed to a computer readable medium, and wherein the royalty is a format royalty.

36. (Original) The method of claim 35 wherein the licensee is a publisher of the computer program and the licensor is an author of the computer program.

37. (Original) The method of claim 36 wherein the licensee is a publisher of the computer program and the licensor is a format holder associated with the medium upon which

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the computer program is affixed.

38. (Original) The method of claim 36 wherein the royalty portion is determined in relation to the cost price, the cost price comprising a manufacturing cost of the article, the format royalty, and the licensee margin.

39. (Original) The method of claim 38 further comprising the steps of:
receiving an article manufacturing cost and a manufactured article quantity, wherein the selling price is determined in relation to the manufacturing cost and an added value including the format royalty;

accepting an order by the customer by receiving ordered article identification information and the manufactured article quantity;

determining a stocked article quantity in relation to the manufactured article quantity and an ordered article quantity; and

determining a balance of stock in relation to the determined stocked article quantity and the manufacturing cost, wherein the balance of stock is not determined in relation to a consideration corresponding to the added value.

40. (Previously Presented) A server computer coupled to a network, and configured to manage the sale of an article from a product distributor, the server computer comprising:

means for receiving payment corresponding to a selling price for the article, the payment being received by a distributor of the article from a buyer of the article,

wherein the article has been manufactured prior to receipt of payment;

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means for determining a royalty due to a licensor of the article, based on the selling price of the article;

means for transmitting, from the distributor to a manufacturer of the article, a portion of the selling price payment corresponding to a licensee margin portion of the selling price, wherein the manufacturer is a licensee of the article; and

means for transmitting, from the distributor to the licensor, a portion of the selling price payment corresponding to the royalty upon a sale the article to the customer.

41. (Currently Amended) The server computer of claim ~~7~~ 40 wherein the article is a computer program affixed to a computer readable medium, and wherein the royalty is a format royalty.

42. (Original) The server computer of claim 41 wherein the licensee is a publisher of the computer program and the licensor is an author of the computer program.

43. (Original) The server computer of claim 41 wherein the licensee is a publisher of the computer program and the licensor is a format holder associated with the medium upon which the computer program is affixed.

44. (Original) The server computer of claim 43 wherein the royalty portion is determined in relation to the cost price, the cost price comprising a manufacturing cost of the article the format royalty, and the licensee margin.

45. (Original) The server computer of claim 44 further comprising:

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means for receiving an article manufacturing cost and a manufactured article quantity, wherein the selling price is determined in relation to the manufacturing cost and an added value including the format royalty;

means for accepting an order by the customer by receiving ordered article identification information and the manufactured article quantity;

means for determining a stocked article quantity in relation to the manufactured article quantity and an ordered article quantity; and

means for determining a balance of stock in relation to the determined stocked article quantity and the manufacturing cost, wherein the balance of stock is not determined in relation to a consideration corresponding to the added value.

46. (Previously Presented) A system for managing the distribution of an article from a distributor to one or more customers, the system comprising:

a licensor who is authorized to make and sell the article and grant production and sales rights to third party entities in exchange for a royalty,

wherein the article is manufactured prior to the receipt of payment for the sale of the article;

a distributor including one or more locations adapted to warehouse and deliver the articles, and an electronic commerce server configured to store information regarding the identity of the article, a cost price associated with the article, and a selling price associated with the article;

a licensee who is authorized by the licensor to manufacture the product in exchange for the royalty, wherein the licensee, licensor, and distributor each have a licensee computer, licensor computer, and distributor computer, respectively, that are connected by a computer

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network and wherein royalty payments are made to the licensee computer upon sale of the article by the distributor computer to a customer.

47. (Original) The system of claim 46 wherein the royalty is determined in relation to the article selling price, the selling price comprising a manufacturing cost of the article, one or more value added cost components, and a distributor cost margin.

48. (Original) The system of claim 47 wherein the royalty is determined in relation to the article cost price, the cost price comprising a manufacturing cost for the article and one or more value added cost components.

49. (Previously Presented) The system of claim 48 wherein the distributor computer pays a portion of the selling price corresponding to the royalty and licensee margin to the licensee computer, and the licensee computer pays a portion of the selling price corresponding to the royalty to the licensor computer.

50. (Previously Presented) The system of claim 49 wherein the distributor computer pays a portion of the selling price corresponding to the royalty to the licensor computer and the distributor computer pays a portion of the selling price corresponding to the licensee margin to the licensee computer.

51. (Previously Presented) The system of claim 50 wherein the article is a computer program affixed to a computer readable medium, and wherein the royalty is a format royalty, and wherein the licensee computer is controlled by a licensee that is a publisher of the computer

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program and the licensor computer is controlled by a licensor that is an author of the computer program.

52. (Previously Presented) The system of claim 51 wherein the licensee is a publisher of the computer program and the licensor computer is controlled by a licensor that is a format holder associated with the medium upon which the computer program is affixed.

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APPENDIX II

EVIDENCE

None

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APPENDIX III
RELATED PROCEEDINGS

None